

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

NORTHERN MICHIGAN HOSPITAL
Employer

and

CASE GR-7-RD-3479

DENNIS JOHNSON, An Individual
Petitioner

and

GENERAL TEAMSTERS UNION, LOCAL
NO. 406, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO
Union

ORDER DISMISSING PETITION

On February 14, 2002, in Case GR-7-RC-22078, and again on December 11, 2003, in Cases GR-7-RD-3395 and GR-7-RD-3415, the Union was certified as the exclusive collective-bargaining representative of the employees of the Employer in the following appropriate collective bargaining unit ("Unit"):

All full-time and regular part-time registered nurses, including team leaders, hospice RNs and The Living Room RNs, employed by the Employer at or out of its combined facility located at 416 Connable, 1 McDonald Drive and 1080 Hager Drive, Petoskey, Michigan; but excluding all casual employees, guards and supervisors as defined in the Act, and all other employees.

On November 14, 2002, the Union commenced a strike in the Unit that continues to date. On December 14, 2004, by letter, the Employer withdrew recognition from the Union, assertedly based on an employee petition signed by a majority of employees in the Unit expressing their nonsupport of the Union.

On January 5, 2005, the Petitioner filed the instant petition seeking to decertify the Union.

To date, the withdrawal of recognition has not been challenged by the filing of an unfair labor practice charge.

On January 12, the Employer filed, in writing, a motion to dismiss the petition asserting that: (1) upon its withdrawal of recognition, no question concerning representation exists; (2) the

Petitioner is “fronting” for the Union; and, (3) the showing of interest for the petition is deficient based upon misrepresentations and having been signed by individuals who no longer are employees of the Employer, i.e., by individuals who have been permanently replaced.

The Petitioner and the Union were served copies of the Employer’s motion and on January 13, the Union filed a response opposing the Employer’s motion. The Petitioner did not respond.

On January 13, the undersigned issued an Order To Show Cause and Postponing Hearing directing the parties to show cause, in writing, why the instant petition should not be dismissed for failing to raise a question concerning representation.

On January 20, the Petitioner and the Union submitted written responses to the order to show cause. The Employer did not file a response.

In his response, the Petitioner asserts the petition should not be dismissed. Rather, he asserts that his petition actually raises a question among the bargaining unit as to the future of union representation and that the bargaining unit should not be forced to take the Employer’s word as to whether or not the Union enjoys majority status. Finally, the Petitioner asserts that a secret ballot election is the proper way to test the Employer’s withdrawal of recognition.

In its response, the Union asserts that the petition should not be dismissed. The Union cites a number of cases in support of its position, including *General Box Company*, 82 NLRB 678 (1949), *Levitz Furniture Co.*, 333 NLRB 717 (2001), and *Dana Corporation*, 341 NLRB No. 150 (2004). The circumstances of the cases cited by the Union, however, are distinguishable from the circumstances of the instant case.

In *General Box Company*, the Board directed an election even though the employer claimed there was no question concerning representation due to the fact that the employer already recognized the union. The Board held that the union was entitled to secure the benefits of a certification under Section 9 of the Act. Here, the Employer has withdrawn recognition from the Union and that withdrawal of recognition is presumed to be lawful in the absence of a challenge to such withdrawal. The instant petition is not one filed by a union seeking representative status, but one that contends that the employees no longer wish to be represented by the Union, a fact that was accomplished by the Employer’s withdrawal of recognition. The lawful withdrawal of recognition extinguishes the relationship between the Union and the Employer and precludes the petition from raising a question concerning representation.

In *Levitz Furniture Co.*, the Board stated its preference for the filing of RM petitions and the holding of secret ballot elections to test a union’s majority status, rather than employer withdrawals of recognition. While it is the Board’s stated preference to utilize secret ballot elections, *Levitz Furniture* does not address the issue of the employees challenging the employer’s withdrawal of recognition through the filing of a decertification petition. Further, the Board indicated that an employer lawfully may withdraw recognition if it is presented with objective evidence showing that the Union no longer represents a majority of the Unit.

Finally, in *Dana Corporation*, the Board decided to address for future determination the issue of whether voluntary recognition will bar a decertification petition. The Union argues that the same theory in allowing employees to challenge the voluntary grant of recognition through the filing of a decertification petition should apply to the withdrawal of recognition, i.e., that the employees should be able to challenge that withdrawal through the filing of a petition. The Union cites no case directly on point. Moreover, the concern expressed by the Board regarding the creation of a bargaining relationship without the sentiments of the employees being heard differs greatly from the extinguishment of the relationship without challenge from the opposing party. The instant petition does not raise a question concerning representation and provides no basis for conducting an election.

Based on the foregoing,

IT IS HEREBY ORDERED that the petition be, and is hereby, dismissed.¹

DATED at Detroit, Michigan, this 24th day of January 2005.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser
Regional Director, Region 7
National Labor Relations Board
Patrick V. McNamara Federal Bldg.
477 Michigan Avenue, Room 300
Detroit MI 48226-2569

¹ Pursuant to the National Labor Relations Board's Rules and Regulations, any party may obtain a review of this action by filing a request therefor with the National Labor Relations Board, Washington D.C. 20570. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board by close of business **February 7, 2005**. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. A request for extension of time should be submitted to the Executive Secretary in Washington, and a copy of any such request for extension of time should be submitted to this Office and to each of the other parties to this proceeding.

The request for review and any request for extension of time must include a statement that a copy has been served on this Office and on each of the other parties to this proceeding in the same or a faster manner as that utilized in filing the request with the Board.